

D. Newton

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November 28, 2012

VIA HAND DELIVERY

Mr. James T. Owens, III
Director, Office of Site Remediation and Restoration
U.S. EPA Records Center
c/o Peterson/Puritan, Inc. Superfund Site
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Superfund Records Center

SITE: Peterson/Puritan 02

BREAK: 11.09

OTHER: 526244

Re: Notice of Potential Liability at Operable Unit Two of the Peterson/Puritan, Inc. Superfund Site, which includes the J.M. Mills Landfill in Cumberland and Lincoln, Rhode Island (the "Site")

Dear Mr. Owens:

On behalf of our client, The Stop & Shop Supermarket Company LLC ("Stop & Shop"), this letter is in response to your letter dated November 2, 2012 and received November 7, 2012 (the "Notice Letter") addressed to William P. Keefe, Esq. of Sherin and Lodgen LLP as notification of potential liability for contamination located at the above-referenced Site and pursuant to the Environmental Protection Agency's (the "EPA's") purported authority under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9606(a) and 9607(a) ("CERCLA").

We have reviewed the Notice Letter and the items listed below, which were included in electronic format with the Notice Letter (collectively, the "Supporting Materials"):

- A description of the Site ("Enclosure A");
- A summary of unrecovered costs for the Site through September 30, 2011 ("Enclosure B");
- A list of PRPs ("Enclosure C");
- An information sheet for small businesses ("Enclosure D");
- Select roll-off route sheets ("Attachment No. 1");
- Select J.M. Mills Landfill receipts ("Attachment No. 2");
- Excerpted deposition of Goditt and Boyer driver John Castello ("Attachment No. 3");
- Excerpted deposition of Goditt and Boyer driver Maurice Luthy ("Attachment No. 4"); and



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- Excerpted deposition of Goditt and Boyer driver Steven Marcaccio ("Attachment No. 5").

While our client is willing to discuss with the EPA settlement of this matter so as to permanently resolve any and all claims that Stop & Shop is a PRP with respect to the Site, please be advised that our client will require additional information as to the specific nature of Stop & Shop's activities at the Site before it may make an informed decision as to how it shall proceed with this matter. Specifically, our client will require additional information that establishes (1) that Stop & Shop's activities caused the EPA to incur response costs for the Site, (2) that the EPA's demand for recovery of such response costs falls within the applicable statute of limitations, and (3) that any settlement amount is based on equitable factors.

With respect to clause (1) above, it is unclear from the Supporting Materials that Stop & Shop's activities caused the EPA to incur response costs for the Site. The depositions of Messrs. Castello, Luthy, and Marcaccio largely describe the disposal of meat, vegetables, paper, cardboard and other non-hazardous biodegradable matter typical of supermarkets. To the extent the depositions reference other materials disposed of at the Site, the (a) type, (b) amount, and (c) origin of materials disposed of are unclear. For example, Mr. Castello testifies that he picked up automotive waste from a Stop & Shop warehouse facility located in Needham, Massachusetts. Yet, people familiar with the operations of Stop & Shop for in excess of thirty (30) years have no knowledge of any warehouse facility ever being located in Needham. The roll-off route sheets and J.M. Mills Landfill receipts included as Attachments No. 1 and No. 2, respectively, are equally unhelpful as they are largely illegible, a fact also acknowledged in the depositions.

With respect to clause (2) above, it is unclear from the Supporting Materials that the EPA's demand for recovery of response costs falls within the applicable statute of limitations. Except as otherwise provided, 42 U.S.C. §9613(g) provides that an initial action for the recovery of costs contemplated by 42 U.S.C. §9607(a) must be commenced within three (3) years for a removal action and within six (6) years for a remedial action. The Notice Letter indicates that the EPA (a) has conducted two time-critical removal actions at the Site, including (i) a time-critical removal action in response to tanks, still bottoms and drums located at the Site and to restrict access to the Site by the construction of a fence and (ii) a time-critical removal action in response to asbestos disposal and fence repair; and (b) is conducting or plans to conduct additional activities at the Site, including (i) Remedial Investigations, (ii) Feasibility Studies, (iii) design and implementation of a Remedial Action for the Site to be approved by the EPA, and (iv) operation, maintenance and monitoring of the Site as deemed necessary by the EPA. No dates are provided for any of the aforementioned activities. When one turns to the Supporting Materials, the only guidance is provided by the description of the Site included as Enclosure A, which provides that the first time-critical removal action was conducted in 1992 and the second time-critical removal action was conducted in November 1997. No further details are provided. The summary of unrecovered costs for the Site through September 30, 2011 included as Enclosure B simply itemizes costs by category (such as payroll, travel, etc.), by vendor, or both, but provides no dates saying when the costs were incurred and/or which removal action or

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remedial action they relate to. In addition, Joan Buonopane, the author of Enclosure B, indicates in her cover memorandum to Michelle Lauterback, Senior Enforcement Counsel, and David Newton, Remedial Project Manager, that the summary of unrecovered costs for the Site through September 30, 2011 should be used as a draft only because the supporting documentation has not yet been reviewed and reconciled. Any settlement amount will have to be based on substantiated costs that fall within the applicable statute of limitations.

With respect to clause (3) above, it is unclear from the Supporting Materials that the demand for payment in the amount of \$2,538,446.55 is based on equitable factors. In addition to the question of arguably outdated and unsubstantiated costs described above, there is no information tying the itemized costs on Enclosure B to the individual PRPs. While the statutory framework of CERCLA provides for liability that is joint and several, 42 U.S.C. §9613(f) provides that "In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate." In Acushnet Co. v. Coaters, Inc., 948 F.Supp. 128 (D. Mass. 1996), the Court, in discussing its interpretation of the statutory phrase "equitable factors", stated that:

. . . plaintiffs must proffer sufficient evidence as to a particular defendant to satisfy a minimum standard of significance of that defendant's responsibility as a source of one or more hazardous substances deposited at the site. Absent such a showing, even the least stringent formulation of a legal test including an "equitable factors" component would require a determination that it is inequitable to put the defendant to the burden of defending itself when the predictable outcome as to the claim for allocation of an equitable share of contribution, in the event of an outcome favorable to plaintiffs as can be reasoned from evidence, would be a share so small that the public interest in remediation of hazardous waste sites would have been disserved because of the commitment of public and private resources to litigation over that alleged share of contribution.

Any settlement amount will have to be based on equitable factors.

While our client is willing to discuss with the EPA settlement of this matter so as to permanently resolve any and all claims that Stop & Shop is a PRP with respect to the Site, please note that this letter is sent for settlement purposes only, and is neither an admission of liability nor an admission of the accuracy or validity of the information contained in the Notice Letter and Supporting Materials. Moreover, Stop & Shop hereby expressly reserves, and shall have the right to pursue, any and all of its rights and remedies under federal law or otherwise, at law and in equity, including its right to seek additional information from the EPA or others, and to assert any arguments, defenses or other legal grounds to limit or preclude liability for contribution or otherwise. This response is not intended to consent to jurisdiction of the EPA.

In addition, please note that this letter shall also confirm that, in accordance with the twenty-one (21) day time-frame outlined in the Notice Letter, this response is timely and shall

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not preclude or otherwise prejudice in any manner whatsoever our client's ability to refute any or all of the EPA's claims with respect to this matter and/or the purported evidence proffered by the EPA as the bases for its claims, including, but not limited to, the purported evidence included in the Supporting Materials.

All further contact by the EPA with regard to this matter should be directed to Ronald W. Ruth, Esq. of Sherin and Lodgen LLP. His contact information is as follows:

Ronald W. Ruth, Esq.
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
617.646.2165 telephone
617.646.2222 facsimile

Any capitalized terms used, but not defined herein, shall have the same meaning as those in the Notice Letter.

Very truly yours,



Christine P. Claffey

CPC/cpc

cc: Steven J. Roberts
Ronald W. Ruth, Esq.

CPC Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110

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TO:

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